FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No. 700

VICTOR J. VEATCH,
Petitioner,

vs.

WILLIAM BORTHWICK, Tax Commissioner of the Territory of Hawaii,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

and

BRIEF IN SUPPORT THEREOF

MELVIN M. BELLI
240 Stockton St.
San Francisco, California
Attorney for Petitioner.

HYMAN M. GREENSTEIN
Attorney at Law
501 Merchandise Mart Bldg.
Honolulu, T. H.
Of Counsel.

SUBJECT INDEX

TABLE OF AUTHORITIES CITED

Statutes

Other Authorities

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No.....

VICTOR J. VEATCH,
Petitioner,

vs.

WILLIAM BORTHWICK, Tax Commissioner of the Territory of Hawaii,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES:

The petitioner above named respectfully prays that a writ of certiorari be issued to the United States Circuit Court of Appeals for the Ninth Circuit to review the decision by that Court entered February 7, 1949, affirming a decision of the Supreme Court for the Territory of Hawaii holding that petitioner is subject to the taxing jurisdiction of the Territory of Hawaii.

I.

SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED

Petitioner is a civilian employee of the United States Army, working and living on Hickam Field, Territory of Hawaii, a military reservation of the United States. (Agreed Statement of Facts, points 1 and 4, R-12.)

He is a citizen of, and domiciled in, the State of Colorado, and has paid taxes to the State of Colorado, on the same income sought to be taxed herein by the Territory of Hawaii. (Agreed Statement of Facts, points 2 and 5, R-12, 13.)

Petitioner has challenged the applicability of the Territory's tax laws against him on the ground that the Territory has no jurisdiction over him nor the earnings from his employment, and hence is without power to properly tax him.

In affirming the decision of the Supreme Court for the Territory of Hawaii, the Circuit Court of Appeals of the Ninth Circuit determined in effect that simply by coming to the Territory of Hawaii one automatically becomes subject to the tax laws of the Territory without regard to domicile, residence, or whether the same income sought to be taxed is already subject to taxation by the domiciliary state of the taxpayer.

A question of triple taxation is involved.

II.

STATEMENT OF PROCEEDINGS IN THE COURTS BELOW AND PARTICULARLY DISCLOSING THE BASIS UPON WHICH IT IS CONTENDED THAT THE SUPREME COURT HAS JURISDICTION TO REVIEW THE JUDGMENT IN QUESTION.

On the 29th day of November, 1946, civil suit was brought in the District Court of Ewa, County of Honolulu, Territory of Hawaii, by the Tax Commissioner of the Territory against petitioner, for taxes claimed to be due and owing by virtue of the Compensation and Dividends Tax Law of the Territory of Hawaii. (Chapter 98, Revised Laws of Hawaii, 1945.)

A demurrer was filed on behalf of petitioner challenging the applicability of said tax law to petitioner and setting forth 16 points of objection. Said demurrer was overruled and the case submitted on an agreed statement of facts. Judgment was entered against petitioner in the sum of $237.35, and the case appealed on points of law to the Supreme Court of the Territory of Hawaii. (R-2-25.)

On the 30th day of July, 1948, the Supreme Court for the Territory of Hawaii entered its decision affirming the judgment of the lower court.

The opinion of the Supreme Court for the Territory of Hawaii is reported in 37 Haw. 188 (adv. sheets) and is found in the Transcript of Record on pages 27-46.

Appeal was duly perfected to the Circuit Court of Appeals of the Ninth Circuit.

In the Circuit Court of Appeals petitioner elected to stand on but one of the objections urged in the lower courts, and reduced the problem to but one question: "Does the Territory of Hawaii have jurisdiction or power to tax persons in the class of petitioner?"

On the 7th day of February, 1949, the Circuit Court of Appeals for the Ninth Circuit, in a *per curiam* opinion, affirmed the judgment of the Territorial Supreme Court.

The jurisdiction of the Supreme Court is invoked under section 1254 of the new Judicial Code.

The case turns on the construction given by the Circuit Court of Appeals of the Ninth Circuit of a federal statute, namely, section 106 (a) Title 4, U.S.C.A., commonly known as the *Buck Act*.

The case comes within the provisions of paragraph 5 (b) of Rule 38 in that a circuit court of appeals has decided an important question of federal law which has not been, but should be, settled by the Supreme Court.

III.

THE QUESTIONS PRESENTED

The questions presented by this petition are:

1. Does the Territory of Hawaii have the power to tax an employee of the United States army *living and working* on a military reservation of the United

States where in point of fact said employee is a citizen of and domiciled in another state, and particularly where that employee pays taxes on the same income sought to be taxed by the Territory of Hawaii, to his domiciliary state?

2. Did the *Buck Act* enlarge the taxing power of the Territory of Hawaii?

3. Does the phrase in the *Buck Act "having jurisdiction to levy such a tax,"*[1] mean that the taxing authority must be able otherwise to establish jurisdiction over the person sought to be taxed?

4. Does not that phrase mean that the Territory of Hawaii cannot tax federal employees, living and working on military reservations, who do not otherwise come within its jurisdiction?

5. Did not the Court of Appeals err in relying on its previous decision in the case of *Yerian v. Territory of Hawaii*, 130 F. 2d 786?

The instant case involves a person *living and working*, on a military reservation, domiciled in another State and paying a net income tax to that State on the same income sought to be taxed herein by the Territory of Hawaii, and not maintaining a residence off the military reservation; while in the *Yerian* case the taxpayer maintained a residence in town, did not work and live on a military reservation and was not subject to triple taxation.

---

[1] 4 U.S.C.A. 106 (a) "No person shall be relieved from liability for any income tax levied by any state, or by any duly constituted taxing authority, therein, having jurisdiction to levy such a tax, by reason of his residing within a federal area . . ."

IV.

REASONS FOR GRANTING THE WRIT

It is a matter of common knowledge that during the recent war, thousands of federal civilian employees were ordered to Pearl Harbor, Hickam Field and other military and naval reservations on the Territory of Hawaii.

In a way they were, and still are, like men in the service, subject to orders as to place of employment, mode of travel thereto, and as to the actual housing accommodations they might live in, and in some cases, must live in.

The petitioner is one of such persons. Not only does he work on a military reservation but he also *lives* there. Not only does he pay taxes to his state of domicile but actually maintains a home there.

Shall it be said that simply by his coming to work on one of these military reservations, geographically within the Territory of Hawaii, he is automatically subject to its income tax laws?

In view of the uncertainty of the international situation, and the maintenance of so many military and naval reservations within the several states and territories, and the hundreds of thousands of federal employees that are involved, a question of general and substantial importance in tax law is raised. This is an important question of federal law which has not been, but should be, settled squarely, by direct decision of this Supreme Court.

It should also be noted that the adjudication involves not only the interpretation of a federal statute but also, it involves the relationship of a federal and state (territorial) and interstate tax jurisdictional question.

CONCLUSION

It is respectfully submitted that for the reasons stated this petition for a writ of certiorari should be granted.

Dated, San Francisco, California.

March 31, 1949.

MELVIN M. BELLI,
Attorney for Petitioner.

HYMAN M. GREENSTEIN
of Counsel

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No.....

VICTOR J. VEATCH,
Petitioner,

vs.

WILLIAM BORTHWICK, Tax Commissioner of the Territory of Hawaii,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

1. The *per curiam* opinion of the Circuit Court of Appeals of the Ninth Circuit affirming the decision of the Supreme Court for the Territory of Hawaii is, set forth in the record. (P. 66.)

2. A concise statement of the grounds on which the jurisdiction of the Supreme Court is invoked has been made in the foregoing petition and need not be repeated here.

CONCISE STATEMENT OF THE CASE

There is no dispute as to the facts.

The case was originally tried upon an agreed statement of facts.

Petitioner is a civilian employee of the United States Army, working and living on Hickam Field, Oahu, Territory of Hawaii, a military reservation of the United States.

He is a citizen of, and domiciled in, the State of Colorado, and has paid taxes to the State of Colorado, on the same income sought to be taxed herein by the Territory of Hawaii.

He has challenged the applicability of the Territory's tax laws upon him.

In short, the question is reduced to simply this:

Does the Territory of Hawaii have power to tax the gross compensation received by an employee of the United States, for services performed by him on a military reservation of the United States, when he both lives and works on said military reservation, which is geographically located on the Territory of Hawaii, he being, however, a domiciliary of the State of Colorado and paying taxes on the same income to the State of Colorado?

The opinion of the Circuit Court of Appeals rested on the authority of the case of *Yerian v. Territory of Hawaii,* (supra) and the *Buck Act.*

It is respectfully submitted that the facts of the instant case are sufficiently distinguishable from the *Yerian* case, and the problem raised of such substantial importance as to warrant independent consideration, if not an actual reconsideration of the issues involved.

ASSIGNMENT OF ERRORS AND SPECIFICATION OF SUCH AS ARE INTENDED TO BE URGED.

We assign the following errors of the Circuit Court of Appeals and intend to urge each of them.

1. The Court erred in not distinguishing the instant case from the *Yerian* case.

2. The Court erred in failing to find that the *Buck Act* is not a positive law creating new tax powers in the Territory of Hawaii.

3. The Court erred in failing to find that the *Buck Act* serves simply to remove certain restrictions relative to the taxation of salaries of persons residing on military reservations by taxing authorities who can otherwise establish jurisdiction over the person sought to be taxed.

4. The Court erred in failing to find that the Territory of Hawaii does not have the power to impose the tax in question on petitioner on the ground that it does not have jurisdiction over him for purposes of taxing his gross compensation derived from employment with the United States government for services performed by him on a military reservation, when he both works and lives on that military reservation and maintains his domicile in another state and pays an income tax on the same income sought to be taxed to his domiciliary state.

ARGUMENT

THE TERRITORY OF HAWAII DOES NOT HAVE POWER TO TAX AN EMPLOYEE OF THE UNITED STATES ARMY LIVING AND WORKING ON A MILITARY RESERVATION OF THE UNITED STATES WHERE IN POINT OF FACT SAID EMPLOYEE IS A CITIZEN OF AND DOMICILED IN ANOTHER STATE.

That the Territory of Hawaii does have a general power of taxation by virtue of Section 55 of the Organic Act to Provide a Government for the Territory of Hawaii, 48 U.S.C.A., Sec. 562, is not a matter of question in this argument; but it is axiomatic that:

> "The taxing power of a state is limited to persons and property within and subject to its jurisdiction."
>
> 37 Cyc. 718

Nor is the question being posed as to whether or not congressional consent to the taxation of federal employees if the taxing authority had the *"jurisdiction to tax such compensation"* was given by the Public Salary Tax Act, 5 U.S.C.A., Sec. 84a, as follows:

> "The United States hereby consents to the taxation of compensation received after December 31, 1938, for personal service as an officer or employee of the United States, any Territory or possession or political subdivision thereof, the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, by any duly constituted taxing authority *having jurisdiction to tax such compensation,* if such

taxation does not discriminate against such officer or employee because of the source of such compensation." (Italics added.)

That was ruled upon in the case *Yerian v. Territory of Hawaii,* 130 F. 2d 786. It is therefore to be presumed that the Territory of Hawaii does have certain powers to tax and has power to tax federal employees, if the Territory *otherwise* has jurisdiction to tax such persons, but it is respectfully submitted that the Territory of Hawaii does not have the power to tax federal employees, living and working on military reservations, who do not otherwise come under its jurisdiction.

In Senate Report No. 112, 76th Cong. 1st. Sess., p. 11, it was clearly set forth that the real purpose of the Public Salary Tax Act was to "facilitate the reciprocal taxation as between State and Federal Governments."

"Under this provision, if any local governmental units have authority to and do impose income taxes, tax may be imposed *upon such compensation subject to the jurisdiction of such units.*" (Italics added.)

The report continues:

"The consent is not intended to operate, nor could it operate, as a consent to any taxation to which as individuals these officers and employees are entitled to object whether under the provisions of the Federal Constitution or of the Constitution or statutes of the respective states.

"For example, the consent has no effect upon the

rights of an officer of the federal government to object . . . thus he may urge that a particular tax is invalid as to him because of an unreasonable classification or the lack of . . . jurisdiction to tax, or for other reasons." (Op. cit. P. 12.) (Italics added.)

Moreover, it is urged that the *Buck Act*, 4 U.S.C.A., Sec. 106 does not extend any jurisdiction over the person of a federal employee not otherwise subject to such jurisdiction simply by force of its provisions:

> "No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, *having jurisdiction to levy such a tax*, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any federal area within such state to the same extent and with the same effect as though such area was not a Federal area."

As is pointed out in Senate Report No. 659, 80th Cong., p. 9, Sec. 108 of the Act must be taken into consideration:

> "The provisions of Sections 105 to 110 of this title shall not for the purposes of any other provision of law be deemed to deprive the United States of exclusive jurisdiction over any Federal area over which it would otherwise have exclusive jurisdiction or to limit the jurisdiction of the United States over any Federal area."

And so—it is respectfully submitted that insofar as petitioner (and persons similarly situated) is concerned there is still one question to be answered. Does the Territory of Hawaii have jurisdiction over him, and if not—can it pass a tax law effective as against him?

The principal case which seems to have been brought to the attention of the Supreme Court of the United States, apparently analagous to the case at bar, is *Kiker v. City of Philadelphia,* 31 A. 2d 289, 346 Pa. 624, which was denied certiorari to the Supreme Court of the United States, 320 U.S. 741, 64 S. Ct. 41, 88 L. Ed. 439. As the background for this denial of certiorari is not given, it might reasonably be concluded that it might have been based upon any one of a number of other points and not necessarily the point at issue here. It is sufficient to note that the precise question that is raised here has not been treated by the Supreme Court, although the adjudication involves the interpretation of federal statutes and involves the relationship of a federal and state (territorial) and interstate jurisdictional question.

It is our belief, and on that point it is respectfully urged that the dissenting opinion by Mr. Chief Justice Maxey in *Kiker v. Philadelphia* (supra) represents the more nearly correct view, and that the matter should be re-considered and the final point of jurisdiction made clear.

But even the majority opinion of the *Kiker* case is not necessarily in bar of petitioner's position. It

reaches its conclusion by a line of reasoning not possible in the instant case and places an emphasis upon our dual system of government, by virtue of which the national government cannot run roughshod over the state governments. In the case of a territory, there is no inherent sovereignty to respect. Sovereignty over the entire territory is already established in the federal government and the federal government alone.

When the Republic of Hawaii ceded all rights of sovereignty to the United States upon annexation as a territory (Joint Resolution No. 55, 55th Cong., 2nd Sess., 30 Stat. 750) and subsequently thereto the United States acquired portions of such areas as military reservations, the argument for exclusive jurisdiction over said areas became even stronger than that which obtains where land is acquired by purchase from a state. For in the latter instance a state has a right to bargain with the United States relative to which rights it might desire to retain, while in the former instance the entire area is under jurisdiction of the United States, and remains so until *specific* congressional action dictates otherwise.

Even in the case of *Rivera v. Buscaglia,* 146 F. 2d 461, which upheld the Puerto Rican legislature taxing the compensation of federal employees, it was said:

> "It may be conceded that the power of a dependency to tax its sovereign will not readily be implied, and that the grant by Congress to the legislature of Puerto Rico of a general power to

> tax should not be construed as consent to the imposition of taxes on the United States itself or any of its agencies or instrumentalities."
>
> (p. 463.)

And in the case of *Fort Leavenworth R.R. v. Lowe,* 114 U.S. 525, 526, 5 S. Ct. 995, 29 L. Ed. 264, it was said:

> "The land constituting the reservation was part of the territory acquired in 1803 by cession from France, and, until the formation of the State of Kansas, and her admission into the Union, the United States possessed the rights of a proprietor, and had political dominion and sovereignty over it. For many years before that admission it had been reserved from sale by the proper authorities of the United States for military purposes, and occupied by them as a military post. *The jurisdiction of the United States over it during this time was necessarily paramount."* (Italics added.)

Jurisdiction is "coextensive with authority and sovereignty."

> *United States v. Motohara,* 4 U.S. Dist. Ct. Hawaii, 62, 65.

Admitting then the sovereignty of the United States over duly organized territories, such as the Territory of Hawaii, it must follow that as soon as the federal government uses any land within such territory for military reservations, then *ipso facto* the territory is ousted of jurisdiction over such areas, in

the absence of specific congressional action to the contrary.

It is noteworthy in this connection to recall the case of *Lowe v. Lowe,* 133 A. 729, 150 Md. 592, 46 A.L.R. 983, 988, wherein the status of civilian employees living on military reservations has been ably set forth:

> "The great weight of authority is to the effect that lands acquired in accordance with the provisions of the Federal Constitution cease to be a part of the state, and become Federal territory, over which the Federal government has complete and exclusive jurisdiction and power of legislation. It is therefore clear that persons residing at Perry point are not residents of the state of Maryland . . . for taxation purposes, . . . for the reason that they reside upon territory belonging to the United States and not the state of Maryland; and in our opinion, for the same reason, they are not such residents of the state as would entitle them to file a bill for divorce in any of the courts of the state. It might be said that it is an unfortunate situation, where by reason of the fact that the Federal government has failed to make provision for such cases, residents upon such reservations are left without any remedy; but it is a condition wherein the only relief which can be given is by the Federal Congress."

This doctrine has been followed in the Territory of Hawaii, relying on *West v. West,* 35 Haw. 461, in which it was ruled that military personnel living off

their reservations could establish domicile for purposes of divorce, upon proof of proper intention to form a new domicile and, by analogy, that persons living on military reservations could not establish residence for the basis of divorce unless they had already become subject to the jurisdiction of the Territory. Quoting from this case:

> "At no time since his arrival in Honolulu has he resided either on a ship or upon the naval reservation. On the contrary, he has continuously resided off the naval reservation, in rented property in Honolulu, and at the time of the hearing in this case he was residing at the address given in his changed service record. *He has never paid a poll tax or other tax here or elsewhere.* (Italics added.) He has never registered or attempted to register as a voter here and testified that he has never voted anywhere. . . . He further testified that when he left Boston to reenlist, he had a fixed intention of abandoning any other home he had for the purpose of making Hawaii his home and permanent domicile, and has kept that intention ever since. . . .
>
> (p. 463, 464.)

> "We think that both reason and authority support the following conclusions: (1) That an officer or enlisted man, when permitted to establish a home outside of his military or naval station, may thus acquire a domicile but cannot acquire a domicile when required to reside in quarters furnished by the government on a military or naval station; . . ."
>
> (p. 472.)

Similarly it has been held that civilians residing on military reservations are subject to the same regulations. This is substantially the doctrine of *Lowe v. Lowe,* supra, which states again on p. 989,

> ". . . They (persons residing on government reservations) are not subject to jury duty; neither can they be taxed for the maintenance of the state government, including the courts . . ."

This doctrine is not opposed in any respect to that set forth in *Fort Leavenworth R.R. Co. v. Lowe,* 114 U.S. 525, 532, 533, which states:

> "When the title is acquired by purchase by consent of the legislatures of the states, the federal jurisdiction is exclusive of all state authority. This follows from the declaration of the constitution that congress shall have 'like authority' over such places as it has over the district which is the seat of government; that is, the power of 'exclusive legislation in all cases whatsoever.' Broader or clearer language could not be used to exclude all other authority than that of congress; and that no other authority can be exercised over them has been the uniform opinion of federal and state tribunals, and of attorneys general."

It has been shown supra that Congress did not intend that persons living on military reservations could be taxed without the right of objection. It is reiterated here again that the right of taxation is extended only when the state could establish jurisdiction, and as was said before, a Territory has an

even greater burden of proof than a state. It is therefore respectfully submitted that notwithstanding the *Buck Act,* the doctrine expressed in *Lowe v. Lowe,* supra, is still applicable.

It is further respectfully submitted that notwithstanding the *Public Salary Tax Act, Buck Act,* the *Yerian,*[1] *Graves,*[2] *Shaffer*[3] and similar cases, the responsibility still remains on the Territory of Hawaii to establish that it has jurisdiction over petitioner before its tax laws can be imposed upon him.

It is important also that the Buck Act is not a positive law creating new power. It merely serves to remove certain restrictions relative to the taxation of salaries of persons residing on military reservations by taxing authorities who can establish jurisdiction over the person sought to be taxed.

The taxing power of a Territory might be considered to be comparable to that of a state—but only insofar as persons domiciled in that Territory are concerned.

In the case at bar we have a person in the employ of the United States Army, living and working in an area specifically set aside for the exclusive use of the United States Army. In such a case, it is respectfully submitted that we have the relationship of dependent to sovereign, and that a general grant of taxation will not suffice to confer jurisdiction to tax persons so situated. Nothing less than a specific act of Congress will suffice.

---

[1] supra.

[2] *Graves v. People of New York ex rel O'Keefe,* 306 U.S. 466, 59 S. Ct. 595, 83 L. Ed. 927, 120 A.L.R. 1466.

[3] *Shaffer v. Carter,* 252 U.S. 37, 40 S. Ct. 221, 64 L. Ed. 445.

"Puerto Rico, an island possession, *like a territory* (italics added), is an agency of the federal government, having no independent sovereignty comparable to that of a state in virtue of which taxes may be levied.

"A territory or a possession may not do so (tax a federal instrumentality) because the dependency may not tax its sovereign. True the Congress may consent to such taxation; but the grant . . . of such a general power to tax should not be construed as consent. Nothing less than an act of Congress clearly and explicitly conferring the privilege will suffice."

Domenech v. National City Bank, 294 U.S. 199, 204, 205, 55 S. Ct. 366, 79 L. Ed. 857.

It is important to note also that petitioner has not come to the Territory of Hawaii to take up a permanent residence. Petitioner was not sent into the Territory of Hawaii but to a military reservation of the United States, by the United States Army in a manner similar to that which obtains in the transferring of personnel in the armed forces. Petitioner is subordinate to the United States Army—and it follows that he can be subject to transfer to areas further across the Pacific or even to some station on the mainland of the United States.

During his entire stay on the military reservation, he has maintained his home in the state of Colorado; owns his own home there; pays real estate and personal property taxes there; *has paid taxes on the same income sought to be taxed herein;* and is domiciled in and a citizen of the state of Colorado.

It is respectfully urged that in view of the special facts of the instant case only one taxing jurisdiction (other than the federal) can tax petitioners income and that is the state of Colorado and not the Territory of Hawaii.

Petitioner is subject to the jurisdiction of the state of Colorado—and it is urged that it then must follow that he cannot be also subject to the jurisdiction of the Territory of Hawaii.

> " 'We take it to be a point settled beyond all contradiction or question that a state has jurisdiction of all persons and things within its territory which do not belong to some other jurisdiction . . .' *Coe v. Errol,* 116 U. S. 517, 524. It is a corollary of this principle that a state has no jurisdiction over any person or thing over which another sovereign power has exclusive jurisdiction."
>
> From dissenting opinion *Kiker v. City of Philadelphia,* 31 A. 2d 289, 298.

Chief Justice Marshall, in *M'Culloch v. Maryland,* 17 U. S. 316, 4 Wheat. 316, 429, had this to say on the subject:

> "All subjects over which the sovereign power of a state extends, are objects of taxation; but those over which it does not extend, are, upon the soundest principles, exempt from taxation. This proposition may almost be pronounced self evident."

It is therefore respectfully urged that the doctrine of *Coe v. Errol,* 116 U. S. 517, 6 S. Ct. 475, 29 L. Ed.

715, to the effect that a state can have jurisdiction only over persons and things within its territory which do not belong to some other jurisdiction (supra) is in point. It is this doctrine that impels a consideration that under the special circumstances and facts of the instant case, petitioner is not subject to the jurisdiction of the Territory of Hawaii for tax purposes on compensation derived from the United States Army and earned on a military reservation, on the Territory of Hawaii, where in point of fact petitioner came to said military reservation from another state; did not lose his citizenship and domicile in that other state; and is already subject to that state's jurisdiction for purposes of taxation on the same income sought to be taxed herein.

Moreover, it is respectfully submitted that, Congress, when it passed the *Buck Act,* did not intend to permit the unconscionable burden of triple taxation.

On the contrary, Congress insisted that domicile be established as a basis for income taxation in the District of Columbia Income Tax Law so that there would be no question of triple taxation (by Federal, State of domicile and the District of Columbia). In drafting this bill, it was said by Representative Bates:

> "We raised that particular point (in conference) because we are much concerned about how those who come from our states would be affected by the income tax provisions of the new laws, and it was distinctly understood that in this bill there should be no triple taxation . . ." 84 Cong. Rec. 8973.

In construing the provisions of the District of Columbia Income Tax Law, the Supreme Court has held that persons coming to the District of Columbia to work for the Federal government, even for an indefinite period of time, should not be subject to the tax if it be proved that a domicile elsewhere actually existed.

> "Did he pay taxes in the old community because of his retention of domicile which he could have avoided by giving it up? Were they nominal or substantial? In view of the legislative history showing that Congress was concerned lest there be 'triple taxation'—Federal, State and District (of Columbia) — the Board should consider whether taxes similar in character to those laid by the Act have been paid elsewhere."
>
> *District of Columbia v. Murphy*, 314 U. S. 441, 458.[9]

Petitioner contends that federal employees would be reluctant to accept employment on military bases located within the geographical limits of states which levied heavy income taxes, which they must meet, together with similar taxes assessed by their domiciliary state, if triple taxation be mandatory.

Other states and territories might decide to levy taxes on the income of persons who merely entered their borders and conducted even a day's business or work. Government employees whose territory ex-

[9] Accord: *D. C. v. Pace*, 320 U. S. 698; followed:
Beedy v. District of Columbia, 126 F. (2d) 647.
Collier v. District of Columbia, 161 F. (2d) 649.
Beckham v. District of Columbia, 163 F. (2d) 701.

tended over large geographical areas inclusive of several states could be taxed by any state or territory through which they passed.

To permit such overlapping of taxation would result in the clashing of sovereignties—something to be avoided.

As Chief Justice Marshall well said:

> "We have a principle which is safe for the states and safe for the union. We are relieved, as we ought to be, from clashing sovereignty; from interfering powers; from a repugnancy between a right in one government to destroy what there is a right in another to preserve."
>
> *M'Culloch v. Maryland,* 17 U. S. 316.

It was to avoid the possibility of just such confusion and controversy that the matter of "jurisdiction" to tax was specifically referred to in the Public Salary Tax Act of 1939 and the *Buck Act.*

If carried to its ultimate end, the very basis of income taxation would be defeated and the taxing standards prove futile. It would open the way for retaliatory taxes *ad infinitum.*

These particular facts coupled with the factor that we are dealing with the power of a territory as distinguished from that of a state lead counsel to suggest that there is *no* case squarely in point with the instant appeal.

It is the very fact that in the instant case we have a taxpayer, domiciled in one state, paying taxes to this state, on the same income that is sought to be taxed

herein that distinguishes our case, and raises a serious doubt as to the power of Congress to give its consent to taxation within federal areas and have that consent work in all cases. Not only is involved the taxing authority of the state or territory and the federal area, but also the sovereignty of the state of the domicile of the taxpayer which must be considered.

The problem is not whether the territory has broad powers of taxation but simply whether petitioner is subject to the jurisdiction of the territory. And if he is not so subject, then neither the Public Salary Tax Act, nor the *Buck Act,* nor any other congressional act, can render him subject to territorial taxation upon income taxed by his domiciliary state.

As between two conflicting taxing authorities every instinct of reason, justice and practicality urges that the taxing authority of the domiciliary state should prevail.

It is the contention of petitioner, that simply by coming to live and work on a military reservation, a person domiciled in another state does not *ipso facto* become subject to the Territorial tax laws, and that he must place his person or activity within the jurisdiction of the Territory, and in the words of the decision in the case of *Wood v. Tawes,* 28 A. (2d) 850, 853:

> "Maintenance of a place of abode, however, must involve at least a sufficient residence within the state to bring the individual within the taxing jurisdiction, otherwise the exaction might amount to a deprivation in violation of the 14th Amendment of the United States Constitution."

In conclusion, petitioner prays that this writ may be granted.

Respectfully submitted,

MELVIN M. BELLI,
Attorney for Petitioner.

HYMAN M. GREENSTEIN,
Of Counsel.